



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/511,357

10/12/2004

John William Collins

348-069

2337

1009

7590

04/12/2006

KING & SCHICKLI, PLLC  
247 NORTH BROADWAY  
LEXINGTON, KY 40507

EXAMINER

FULTON, CHRISTOPHER W

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/511,357	COLLINS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Christopher W. Fulton	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 11-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-22 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 16-19, 23 and 24 is/are rejected.
- 7) ☒ Claim(s) 12-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
3. Claims 1, 2, 4, 5, 16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bies in view of Boerder.

The device as claimed is disclosed by Bies with a first component 16 including a labeled first set 54 of roofing related information, at least one further labeled set 72 of roofing related information, a second component 30 pivotally connected to the first component, and directions for use of the device printed on the device, but lacks the shape of the members being arcuate. Boerder teaches using a first arc-shaped component 22 including a labeled first set 56 of roofing related information, at least one further labeled set 54 of roofing related information, and a second arc-shaped component 24 pivotally connected 64 to the first component. Therefore, it

Art Unit: 2859

would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pivoting members of Bies arcuate as taught by Boerder to conform to the rotational aspect of the rotating members.

4. Claims 1, 3-5, 9, 11, 16, 19, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lytle in view of Boerder.

The device as claimed is disclosed by Lytle with a first component (A) including a labeled first set (G) of roofing related information, at least one further labeled set (F) of roofing related information, and a second component (C) with a viewing aperture (C<sup>3</sup>) pivotally connected (B) to the first component, but lacks the shape of the members being arcuate. Boerder teaches using a first arc-shaped component 22 including a labeled first set 56 of roofing related information, at least one further labeled set 54 of roofing related information, and a second arc-shaped component 24 pivotally connected 64 to the first component. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pivoting members of Lytle arcuate as taught by Boerder to conform to the rotational aspect of the rotating members.

5. Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bies or Lytle in view of Boerder and further in view of Wagner et al.

The device as claimed is disclosed by the combination of either Bies, or Lytle in view of Boerder as stated in the rejections recited above, but lacks the device having color codes scales and renderings on the device of the item being measured. Wagner et al teaches using color and shapes to indicate to the user the various scales on the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use colors or

Art Unit: 2859

shapes in the combination of either Bies or Lytle in view of Boerder as taught by Wagner et al to indicate to the user the various scales on the device for measuring different features desired.

6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bies or Lytle in view of Boerder and further in view of Barry et al.

The device as claimed is disclosed by the combination of either Bies, or Lytle in view of Boerder as stated in the rejections recited above, but lacks the arc-shaped members having substantially the same radii. Barry et al teaches using arc-shaped members having substantially the same radii in a measurement device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use arc-shaped members having substantially the same radii in the combination of either Bies or Lytle in view of Boerder as taught by Barry et al to make the device as compact as possible.

***Allowable Subject Matter***

7. Claims 12-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 20-22 are allowed.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-9, 11, 16-19, 23, and 24 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Art Unit: 2859

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

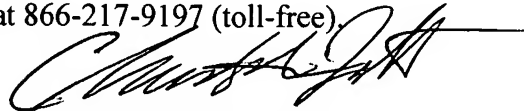
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (571) 272-2242. The examiner can normally be reached on M-Th 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2859

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher W. Fulton  
Primary Examiner  
Art Unit 2859

CWF